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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DAVID MCKEW,

Plaintiff,

v.

SAN FRANCISCO MUNICIPAL  
RAILWAY, UNITED STATES POSTAL  
SERVICE, MELVIN WASHINGTON,

Defendants.

Case No. 07-3620 EDL

**JOINT STATUS STATEMENT**

Date: October 16, 2007  
Time: 10:00 a.m.  
Place: Courtroom E, 15<sup>th</sup> Floor

1 THE PARTIES HEREBY SUBMIT THIS JOINT STATEMENT UPDATING THE COURT AS  
2 TO THE STATUS OF THIS MATTER:

3 1. Subject matter of the litigation

4 This is a personal injury action. Plaintiff alleges he suffered personal injuries while  
5 riding the San Francisco Municipal Railway's cable car on September 2, 2006.

6 2. Appearances

7 Plaintiff McKew has appeared and filed a Consent to the Magistrate's Jurisdiction.

8 See Docket #10. Defendant United States Postal Service filed a motion to dismiss the  
9 complaint for failure to exhaust administrative remedies before filing suit and it filed  
10 a Consent to the Magistrate's Jurisdiction. See Docket ## 4-7, 9.

11 Defendants City and County of San Francisco on behalf of San Francisco Municipal  
12 Railway appeared by answering the complaint in State Court. San Francisco has not  
13 filed an appearance in the federal action on the understanding that the action would  
14 soon be remanded to state court. San Francisco concurs with plaintiff and the  
15 Federal Defendant that the action should be remanded to State Court.

16 3. Procedural History

17 Plaintiff filed his complaint in San Francisco Superior Court on May 30, 2007, less  
18 than four months after presenting his administrative tort claim to the United States  
19 Postal Service. The Federal Defendant removed the action to this Court on July 13,  
20 2007 and filed its motion to dismiss on July 27, 2007. See Docket ## 1, 4-7. The  
21 Court did not conduct a hearing on the motion on September 4, 2007, as noticed, and  
22 the motion was unopposed by plaintiff. See Docket # 11.

23 4. Dismissal and Remand of State Law Claims Requested

24 Plaintiff and the Federal Defendant concur that this action should be dismissed,  
25 without prejudice, pursuant to the Ninth Circuit's controlling precedent applying the  
26 Federal Tort Claims Act. All parties agree that after dismissal of the Federal  
27 Defendant without prejudice, the Court should remand the remaining claims and

1 parties to state court. 28 U.S.C. section 1447(c) states, in pertinent part: "If at any  
2 time before final judgment it appears that the district court lacks subject-matter  
3 jurisdiction, the case shall be remanded." The district court may remand a case for  
4 lack of jurisdiction on its own, without a motion by plaintiff or other parties. Page v.  
5 City of Southfield, 45 F.3d 128, 133 (6<sup>th</sup> Cir. 1995); In re Allstate Ins. Co., 8 F.3d  
6 219, 233 (5<sup>th</sup> Cir. 1993).

7 DATED: October 10, 2007

KERN, NODA, DEVINE & SEGAL

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9  
10 /s/ \_\_\_\_\_

11 Phillip A. Segal, Esq.

12 ATTORNEYS FOR PLAINTIFF

14 DATED: October 10, 2007

SAN FRANCISCO CITY ATTORNEY'S OFFICE

16 /s/ \_\_\_\_\_

17 David Newdorf, Esq.

18 Deputy City Attorney

19 ATTORNEYS FOR DEFENDANTS MUNICIPAL  
RAILWAY AND WASHINGTON

20 DATED: October 10, 2007

UNITED STATES ATTORNEY'S OFFICE

22 /s/ \_\_\_\_\_

23 Jonathan U. Lee

24 Assistant United States Attorney

25 ATTORNEYS FOR UNITED STATES POSTAL  
SERVICE